

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MISSOURI RIVER BASIN BETWEEN MUSSELSHELL RIVER
AND FORT PECK DAM - BASIN (40E)
PRELIMINARY DECREE

CLAIMANTS: Towe Farms Inc.; Darlyne Dascher Trust

CASE 40E-0259-R-2022

40E 164997-00

40E 30045915

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Towe Farms Inc. and the Darlyne Dascher Trust are the record co-owners (Claimants) of claims 40E 164997-00 and 40E 30045915.

2. The Claimants were ordered to meet with a DNRC employee to address the following unresolved issue remarks:

Claim 40E 164997-00:

THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

THE CLAIMED SOURCE ON POD NO. 18 MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE FOR POD NO. 18 MAY BE SURFACE WATER FROM ROCK CREEK, NORTH FORK.

Claim 40E 30045915:

THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE S2NE SEC 24 TWP 23N RGE 42E GARFIELD COUNTY.

THIS CLAIM APPEARS TO DIVERT WATER FROM TWO SEPARATE SOURCES. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

3. On April 20, 2022, DNRC Water Resource Specialist Pam Weinmeister filed a Memorandum stating she discussed the issue remarks in separate conversations with Tom Towe of Towe Farms Inc. and Darlyne Dascher of the Darlyne Dascher Trust. (Doc.¹4.00).

4. The April 20, 2022 Memorandum referenced claim 40E 30129309 (in Case 40E-0204-R-2022):

Water right 40E 30129309 was filed by Towe Farms Inc. on June 24, 2019 (exhibit D). Point of diversion #8 and place of use #8 are located in the NE Sec. 20 Twp. 23N Rge. 43E. The source is Rock Creek, North Fork.

Water right 40E 30129309 is involved in Case 40E-0204-R-2022 regarding an ownership issue.

- If the resolution for case 40E-0204-R-2022 results in the removal of point of diversion #8 and place of use #8, Towe Farms Inc. and Darlyne Dascher may want to pursue the creation of an implied claim from water right 40E 164997-00 for point of diversion # 18 and place of use #16 with a source of Rock Creek, North Fork. The implied claim would need to have the appurtenant remark added to prevent an ownership issue as place of use is located on Federal Land.
- If the resolution of case 40E-0204-R-2022 results in claim 40E 30129309 remaining as decreed, Towe Farms Inc. and Darlyne Dascher may want to remove point of diversion #18 and place of use #16 from water right 40E 164997-00.

¹ “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

Proceedings in Case 40E-0259-R-2022 were paused while case 40E-0204-R-2022 was closed.

5. In the April 20, 2022 Memorandum, Ms. Weinmiester noted that the points of diversion and places of use for claim 40E 164997-00 are sorted differently.

6. Presently, only one source is listed on claim 40E 164997-00: Missouri River (Fort Peck Lake). The issue remarks decreed on claim 40E 164997-00 indicate the source for point of diversion ID No. 18 is Rock Creek, North Fork. While the issue remark suggests an implied should be created to represent the second source, this is not a requirement – both sources may be reflected on the claim.

7. Claim 40E 30045915 was decreed with the point of diversion and place of use decreed as:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | S2NE | 24 | 23N | 43E | MCCONE |

Pursuant to the issue remark and the record for claim 40E 30045915, it appears the point of diversion and place of use legal land descriptions should be modified as follows:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | | S2NE | 24 | 23N | 42E | MCCONE |

8. An Order was issued setting a deadline to determine if the Claimants agreed or disagreed with the following proposed modifications to claims 40E 164997-00 and 40E 30045915:

- **Claim 40E 165997-00:**
 - The source for point of diversion ID No. 16 be changed to Rock Creek, North Fork.
 - The places of use be re-sorted to match the points of diversion.
- **Claim 40E 30045915:**
 - The point of diversion and place of use legal land descriptions will be changed to:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | | S2NE | 24 | 23N | 42E | MCCONE |

The Order Setting Filing Deadline indicated that if nothing were filed by the deadline, this Water Master would conclude that the Claimants agree with the proposed changes and a Master's Report would be issued recommending the changes be made to both claims. The Order included the following language:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATIONS

1. Claims 40E 164997-00 and 40E 30045915 should be modified as shown in Finding of Fact No. 8.

2. The issue remarks should be removed from claims 40E 164997-00 and 40E 30045915.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Towe Farms Inc
PO Box 30457
Billings, MT 59107

Darlyne Dascher Trust
Darlyne Dascher Trustee
184 N Rock Creek Road
Fort Peck, MT 59223

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM
BASIN 40E

Water Right Number: 40E 164997-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: TOWE FARMS INC
PO BOX 30457
BILLINGS, MT 59107

DASCHER, DARLYNE TRUST
% DARLYNE DASCHER, TRUSTEE
184 N ROCK CREEK ROAD
FORT PECK, MT 59223

Priority Date: DECEMBER 31, 1916
Type of Historical Right: USE
Purpose (use): STOCK

***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

***Source Name:** ROCK CREEK, NORTH FORK
Source Type: SURFACE WATER

***Source Name:** MISSOURI RIVER (FORT PECK LAKE)
Source Type: SURFACE WATER

***Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|---|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | NE | 1 | 23N | 42E | GARFIELD |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | | |
| 2 | | NENW | 1 | 23N | 42E | GARFIELD |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | | |
| 3 | | NWNW | 1 | 23N | 42E | GARFIELD |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | | |

| | | | | | |
|---|------|----|-----|-----|----------|
| 4 | SE | 1 | 23N | 42E | GARFIELD |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 5 | SE | 1 | 23N | 42E | GARFIELD |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 6 | SW | 1 | 23N | 42E | GARFIELD |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 7 | SE | 2 | 23N | 42E | GARFIELD |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 8 | NE | 11 | 23N | 42E | GARFIELD |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 9 | E2NW | 11 | 23N | 42E | GARFIELD |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 10 | N2NE | 24 | 23N | 42E | GARFIELD |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 11 | S2 | 18 | 23N | 43E | MCCONE |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 12 | NENE | 19 | 23N | 43E | MCCONE |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 13 | NWNE | 19 | 23N | 43E | MCCONE |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | |
| *Period of Diversion: JANUARY 1 TO DECEMBER 31 | | | | | |
| Diversion Means: LIVESTOCK DIRECT FROM SOURCE | | | | | |
| 14 | NENW | 19 | 23N | 43E | MCCONE |
| *Source Name: MISSOURI RIVER (FORT PECK LAKE) | | | | | |

***Period of Diversion:** JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 15 SENW 19 23N 43E MCCONE
***Source Name:** MISSOURI RIVER (FORT PECK LAKE)
***Period of Diversion:** JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 16 1 19 23N 43E MCCONE
***Source Name:** ROCK CREEK, NORTH FORK
***Period of Diversion:** JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 17 2 19 23N 43E MCCONE
***Source Name:** MISSOURI RIVER (FORT PECK LAKE)
***Period of Diversion:** JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
 18 NENE 20 23N 43E MCCONE
***Source Name:** MISSOURI RIVER (FORT PECK LAKE)
***Period of Diversion:** JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
***Period of Use:** JANUARY 1 TO DECEMBER 31

***Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | | NE | 1 | 23N | 42E | GARFIELD |
| 2 | | | NENW | 1 | 23N | 42E | GARFIELD |
| 3 | | | NWNW | 1 | 23N | 42E | GARFIELD |
| 4 | | | SE | 1 | 23N | 42E | GARFIELD |
| 5 | | | SW | 1 | 23N | 42E | GARFIELD |
| 6 | | | SE | 2 | 23N | 42E | GARFIELD |
| 7 | | | NE | 11 | 23N | 42E | GARFIELD |
| 8 | | | E2NW | 11 | 23N | 42E | GARFIELD |
| 9 | | | N2NE | 24 | 23N | 42E | GARFIELD |
| 10 | | | S2 | 18 | 23N | 43E | MCCONE |
| 11 | | | NENE | 19 | 23N | 43E | MCCONE |
| 12 | | | NWNE | 19 | 23N | 43E | MCCONE |
| 13 | | | NENW | 19 | 23N | 43E | MCCONE |
| 14 | | | SE | 19 | 23N | 43E | MCCONE |
| 15 | | | | | | | |
| 16 | | 1 | | 19 | 23N | 43E | MCCONE |
| 17 | | 2 | | 19 | 23N | 43E | MCCONE |
| 18 | | | NENE | 20 | 23N | 43E | MCCONE |

THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LAND, BUT THIS RIGHT IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS IN VALLEY COUNTY, MONTANA: E2SW OF SEC. 4 AND NENE OF SEC. 20, TWP. 23N RGE 43E.

Remarks:

THE IMPLIED CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 40E 30045912, 40E 30045913, 40E 30045914, 40E 30045915, 40E 30045916, 40E 30045917.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, BETWEEN MUSSELSHELL RIVER AND FORT PECK DAM
BASIN 40E

Water Right Number: 40E 30045915 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: TOWE FARMS INC
PO BOX 30457
BILLINGS, MT 59107

DASCHER, DARLYNE TRUST
% DARLYNE DASCHER, TRUSTEE
184 N ROCK CREEK ROAD
FORT PECK, MT 59223

***Priority Date:** JULY 11, 1936
***Type of Historical Right:** USE
***Purpose (use):** STOCK
***Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE.
***Volume:** THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.
***Source Name:** MISSOURI RIVER (FORT PECK LAKE)
Source Type: SURFACE WATER
***Point of Diversion and Means of Diversion:**

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | S2NE | 24 | 23N | 42E | GARFIELD |

Period of Diversion: JANUARY 1 TO DECEMBER 31
Diversion Means: LIVESTOCK DIRECT FROM SOURCE
***Period of Use:** JANUARY 1 TO DECEMBER 31
***Place of Use:**

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | | S2NE | 24 | 23N | 42E | GARFIELD |

THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LAND, BUT THIS RIGHT IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS IN VALLEY COUNTY, MONTANA: E2SW OF SEC. 4 AND NENE OF SEC. 20, TWP. 23N RGE 43E.

Remarks:

THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 40E 164997-00.